

# Submission of Federal Rules Under the Congressional Review Act

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☐ President of the Senate

☒ Speaker of the House of Representatives

☐ GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency

Department of Defense

2. Subdivision or Office

OUSD(AT&L)DPAP(DAR)

3. Rule Title

Consolidation of Contract Requirements

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)  
DFARS Case 2003-D109

5. Major Rule ☐ Non-major Rule ☒

6. Final Rule ☐ Other ☒ Interim Rule

7. With respect to this rule, did your agency solicit public comments? Yes ☐ No ☒ N/A ☐

8. Priority of Regulation (fill in one)

☒ Economically Significant; or  
Significant; or  
Substantive, Nonsignificant

☐ Routine and Frequent or  
Informational/Administrative/Other  
(Do not complete the other side of this form  
if filled in above.)

9. Effective Date (if applicable) September 16, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached ☒ stated in rule ☐

Submitted by: Deidre A. Lee (signature)

SEP 13 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:

Date Received: \_\_\_\_\_

Committee of Jurisdiction: \_\_\_\_\_

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SEP 23 10 5:40  
SPEAKER'S ROOMS  
U.S. HOUSE OF REPS.

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			
_____			
_____			
_____			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 207 and 219

[DFARS Case 2003-D109]

Defense Federal Acquisition Regulation Supplement;  
Consolidation of Contract Requirements

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004. Section 801 places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract.

DATES: Effective date: [Date of publication in Federal Register].

Comment date: Comments on the interim rule should be submitted to the address shown below on or before [60 days after date of publication], to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D109, using any of the following methods:

- o Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

o Defense Acquisition Regulations Web Site:  
<http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

o E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D109 in the subject line of the message.

o Fax: Primary: (703) 602-7887; Alternate: (703) 602-0350.

o Mail: Defense Acquisition Regulations Council, Attn: Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

o Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to  
<http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Hairston-Benford,  
(703) 602-0289.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends DFARS Parts 207 and 219 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 801 adds 10 U.S.C. 2382, which places restrictions on the use of an acquisition strategy that includes a consolidation of contract requirements with a total value exceeding \$5,000,000.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## **B. Regulatory Flexibility Act**

This rule is expected to have a beneficial impact on small business concerns. An initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

This interim rule amends the DFARS to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2004. Section 801 adds 10 U.S.C. 2382, which places restrictions on the consolidation of two or more requirements of a DoD department, agency, or activity into a single solicitation and contract, when the total value of the requirements exceeds \$5,000,000. The objective of the rule is to ensure that decisions regarding consolidation of contract requirements are made with a view toward providing small business concerns with appropriate opportunities to participate in DoD procurements as prime contractors and subcontractors. The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD considers the restrictions on consolidation of contract requirements to be separate and distinct from the restrictions on contract bundling specified in the Federal Acquisition Regulation. There are no significant alternatives that would accomplish the objectives of 10 U.S.C. 2382. The impact on small entities is expected to be positive.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small

businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D109.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 801 provides that a DoD department, agency, or activity may not execute an acquisition strategy that includes a consolidation of contract requirements with a total value exceeding \$5,000,000, unless the senior procurement executive concerned conducts market research, identifies any alternative contracting approaches that would involve a lesser degree of consolidation, and determines that the consolidation is necessary and justified. Comments received in response to this interim rule will be considered in the formation of the final rule.

## List of Subjects in 48 CFR Parts 207 and 219

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 207 and 219 are amended as follows:

1. The authority citation for 48 CFR Parts 207 and 219 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### **PART 207--ACQUISITION PLANNING**

2. Sections 207.170 through 207.170-3 are added to read as follows:

**207.170 Consolidation of contract requirements.**

**207.170-1 Scope.**

This section implements 10 U.S.C. 2382.

**207.170-2 Definitions.**

As used in this section--

Consolidation of contract requirements means the use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited.

Multiple award contract means--

- (1) A multiple award schedule issued by the General Services Administration as described in FAR Subpart 8.4;
- (2) A multiple award task order or delivery order contract issued in accordance with FAR Subpart 16.5; or
- (3) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources for the same line item under the same solicitation.

**207.170-3 Policy and procedures.**

(a) Agencies shall not consolidate contract requirements with a total value exceeding \$5,000,000 unless the acquisition strategy includes--

- (1) The results of market research;
- (2) Identification of any alternative contracting approaches that would involve a lesser degree of consolidation; and
- (3) A determination by the senior procurement executive that the consolidation is necessary and justified.

(i) Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits include costs and, regardless of whether quantifiable in dollar amounts--

- (A) Quality;
- (B) Acquisition cycle;



(C) Terms and conditions; and

(D) Any other benefit.

(ii) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

(b) Include the determination made in accordance with paragraph (a) (3) of this section in the contract file.

#### **PART 219--SMALL BUSINESS PROGRAMS**

3. Section 219.201 is amended by adding paragraph (d)(11) to read as follows:

#### **219.201 General policy.**

\* \* \* \* \*

(d) \* \* \*

(11) Also conduct annual reviews to assess--

(A) The extent of consolidation of contract requirements that has occurred (see 207.170); and

(B) The impact of those consolidations on the availability of small business concerns to participate in procurements as both contractors and subcontractors.

\* \* \* \* \*